

ANALYSIS OF ORIGINAL BILL

Franchise Tax Board

Author: Nunez Analyst: Rachel Coco Bill Number: AB 843
Related Bills: See Legislative History Telephone: 845-4328 Introduced Date: February 18, 2005
Attorney: Patrick Kusiak Sponsor: _____

SUBJECT: Tax Preparers/Refund Anticipation Loans

SUMMARY

This bill would prescribe guidelines to regulate income tax refund anticipation loans (RALs).

PURPOSE OF THE BILL

According to the author's office, the purpose of the bill is to protect consumers who enter into RALs.

EFFECTIVE/OPERATIVE DATE

This bill would be effective and operative beginning on or after January 1, 2006.

POSITION

Pending.

ANALYSIS

FEDERAL/STATE LAW

Current federal and state tax laws provide taxpayers with the option of filing an electronic tax return or a paper tax return. In addition, both the Internal Revenue Service (IRS) and the Franchise Tax Board (FTB) issue taxpayer refunds via direct deposit or check.

Existing federal and state tax laws are silent in regard to the regulation of RALs.

State law defines a "Tax Preparer" as a person who, for a fee, assists with or prepares state or federal income tax returns for another person or who assumes responsibility for final completed work on a tax return.

Current state law requires Tax Preparers to register with the California Tax Education Council (CTEC) and maintain a bond in the amount of \$5,000 prior to conducting business in the state. State law also requires Tax Preparers to follow prescribed standards of conduct and specifies certain actions, such as not signing a customer's tax return or making fraudulent, untrue, or misleading statements, as violations of those standards.

Board Position:

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_____ N	_____ OUA	<u> X </u> PENDING

Department Director

Date

Gerald H. Goldberg

3/9/05

A violation of the standards of conduct is a misdemeanor, punishable by a fine of up to \$1,000 or imprisonment in county jail up to one year, or both.

The laws regulating the professional performance of Tax Preparers will cease to be operative July 1, 2008, and will be repealed January 1, 2009.

THIS BILL

This bill would include guidelines for issuing RALs in the standards of conduct for Tax Preparers.

Specifically, this bill would require Tax Preparers that advertise RALs to conspicuously state that a RAL is a loan and not the client's actual income tax refund.

This bill would require Tax Preparers to post a fee schedule containing current fees for RALs, electronic filing of the client's tax return, setting up a refund account, and any other RAL related activities.

The bill would require that Tax Preparers provide written notice to clients stating that their refund could be obtained in 10-14 days if they filed electronically with the IRS.

The bill would prohibit any Tax Preparer that makes or facilitates RALs from the following activities:

1. Requiring a client to enter into a loan arrangement in order to complete a tax return.
2. Misrepresenting a RAL.
3. Failing to process the application for a RAL promptly after the client applies for the loan.
4. Engaging in any transaction that operates a fraud upon any person in connection with a RAL.
5. Facilitating a RAL in which the fee being charged is different than the posted fee.

This bill would define "client" as an individual for whom a Tax Preparer performs or agrees to perform tax preparation services.

This bill would define "refund anticipation loan" as a loan, whether provided by the Tax Preparer or another entity, such as a financial institution, in anticipation of, and whose payment is secured by, a client's federal or state income tax refund or by both.

IMPLEMENTATION CONSIDERATIONS

Implementing this bill would not impact the department's programs or operations.

LEGISLATIVE HISTORY

AB 2868 (Nunez, 2003/2004) would have enacted the Refund Anticipation Loan Act for purposes of regulating RALs. AB 2868 was vetoed by Governor Schwarzenegger. The veto message stated that consumer protection should be built into existing programs regulating Tax Preparers without creating a new government program.

SB 1543 (Figueroa, Stats.2004, Ch. 921) requires FTB, upon funding from CTEC, to enforce specific rules governing Tax Preparers.

PROGRAM BACKGROUND

While this bill would require Tax Preparers that offer RALs to notify clients of federal direct deposit refund (DDR) options, the bill fails to mention that DDR is also available for state income tax refunds.

DDRs allow taxpayers to have their tax refund electronically deposited into their checking or savings account. Taxpayers must provide FTB with their financial institution's routing transit number, their depositor account number, and whether the account is a checking or savings account. Taxpayers who file electronically and request DDR generally receive their refund in five to seven banking days.

OTHER STATES' INFORMATION

Review of *Illinois*, *Massachusetts*, *Michigan*, *Minnesota*, and *New York* laws found that only one state provides for the regulation of RALs.

Minnesota tax law requires tax preparers who offer RALs to make specific disclosures to clients, including IRS direct deposit options, and to follow prescribed standards of conduct, similar to the standards prescribed by this bill.

These states were selected due to their similarities to California's economy, business entity types, and tax laws.

FISCAL IMPACT

This bill would not impact the department's costs.

ECONOMIC IMPACT

This bill would not impact state income tax revenue.

LEGISLATIVE STAFF CONTACT

Rachel Coco
Franchise Tax Board
845-4328
rachel.coco@ftb.ca.gov

Brian Putler
Franchise Tax Board
845-6333
brian.putler@ftb.ca.gov